



(4) Mathewson Corporation, Inc. (“the company”) was, during the period from January 30, 2008 to the present (“the pertinent period”), an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5), and had been a corporation having an office and place of business at 86 Finnell Drive, Weymouth, Massachusetts, within the jurisdiction of this Court. On June 15, 2012, the company filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code.

(5) During the pertinent period, Defendant Thomas R. Brewer was the owner, President and Director of the company, and has been residing at 12 Linda Lane, Forestdale, Massachusetts 02644.

(6) On January 1, 1984, Mathewson Corporation, Inc. established the Mathewson Corporation, Inc. 401(k) Profit Sharing Plan (“the Plan”), an employee pension benefit plan within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and which is covered under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a). The Plan was amended and restated as of January 1, 2010.

(7) The purpose of the Plan is to provide retirement benefits for the exclusive benefit of its participants, employees of Mathewson Corporation, Inc., and their beneficiaries.

(8) During the pertinent period, Mathewson Corporation, Inc. has been the sponsor of the Plan, as defined by ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i). It also acted as Plan Administrator for the Plan, and as such, was a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Furthermore, at all times relevant hereto, Mathewson Corporation, Inc. was a party in interest within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

(9) During the pertinent period, Defendant Thomas R. Brewer was the Trustee of the Plan, and as such has been a fiduciary with respect to the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Furthermore, at all times relevant hereto, Brewer has been a party in interest within the meaning of ERISA § 3(14)(A), (E) and (H), 29 U.S.C. § 1002(14)(A), (E) and (H).

(10) According to Plan documents, the Plan was to be funded by withheld employee contributions, determined by participant election up to the maximum allowed by law. During the pertinent period, the contributions withheld on behalf of each Plan participant became assets of the Plan by operation of 29 C.F.R. § 2510.3-102.

(11) During the pertinent period, Mathewson Corporation, Inc. failed to remit withheld employee contributions totaling \$17,071.53 (plus interest). To date, this amount is due and owing to the Plan.

(12) During the pertinent period, Defendant Brewer, as a Plan fiduciary, failed to undertake measures to ensure that the withheld employee contributions were forwarded to the Plan.

(13) As a result of the conduct set forth at paragraphs 11 and 12, Defendant Brewer failed to discharge his fiduciary duties for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

(14) As a result of the conduct set forth at paragraphs 11 and 12, Defendant Brewer failed to discharge his fiduciary duties with care, skill, prudence and diligence, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

(15) As a result of the conduct set forth at paragraphs 11 and 12, Defendant Brewer failed to act in accordance with Plan documents, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

(16) As a result of the conduct set forth at paragraphs 11 and 12, Defendant Brewer participated in what he knew or should have known constituted a prohibited transaction by dealing with the assets of the Plan in his own interest or those of his company, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

(17) As a result of the conduct set forth at paragraphs 11 and 12, Defendant Brewer engaged in prohibited transactions by causing or permitting what he knew or should have known constituted an extension of credit between the Plan and the company, a party in interest, in violation of ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

WHEREFORE, the Secretary of Labor prays that this Court enter an Order:

- (1) Permanently enjoining Defendant Brewer from violating, or knowingly participating in violations of, the provisions of ERISA §§ 404 and 406, 29 U.S.C. §§ 1104 and 1106.
- (2) Permanently enjoining Defendant Brewer from serving as a fiduciary to the Plan or any other employee benefit plan covered by ERISA;
- (3) Requiring Defendant Brewer to undo the prohibited transactions in which he engaged and to restore to the Plan any and all losses incurred as a result of breaches of his fiduciary duties and the violations he committed or for which he is liable, with appropriate interest;
- (4) Awarding to Plaintiff the costs of this action, and other relief as is equitable and just.

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